

CALIFORNIA STATE PERSONNEL BOARD MEETING
801 Capitol Mall
Sacramento, California

Public Session Location - Room 150
Closed Session Location - Room 141

MID-MONTH BOARD MEETING MINUTES**

February 19, 2003

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

William Elkins, President
Ron Alvarado, Vice President
Maeley Tom, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. State Personnel Board President William Elkins and Executive Officer, Walter Vaughn, met with legislative leaders and representatives of the Governor's office to discuss the impact of the proposed 2003-04 budget cuts.
- B. The California State Employees Association has indicated their support for additional resources at the State Personnel Board (SPB) and has distributed a flyer in support of restoration of funds to SPB.

** The State Personnel Board Summary Minutes can be obtained at the following Internet address:
<http://www.spb.ca.gov/spbmeet/spbminrd.cfm>

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on the following:

Pending Litigation:

- A. State Personnel Board (SPB) v. Department of Personnel Administration (DPA)/California State Employees Association (CSEA) (post and promote) - CSEA and DPA have appealed trial court's ruling invalidating a negotiated post and promote process as violative of the merit principle. This matter is currently in the briefing process in Third District Court of Appeal.
- B. Connerly v. State Personnel Board - Connerly has challenged, in the Court of Appeal, the trial court's implementation of the Court of Appeal decision. This matter is in the briefing stage. SPB is not taking an active role at this time.
- C. SPB v. DPA - (consolidated cases challenging Memoranda of Understanding (MOU) provisions providing for arbitration of discipline). Matters are pending oral argument. Court recently denied SPB's request that the court stay the proceeding before the Public Employment Relations Board (PERB) that challenges the Board's refusal to approve Board of Adjustment decisions and to stay International Union of Operating Engineers (IUOE) (Lunsford) v. State of California, a case pending before the superior court in which IUOE seeks to confirm an arbitration award rendered in a disciplinary case.
- D. IUOE (Lunsford) v. State of California - SPB has been granted leave to intervene in the Lunsford matter. The hearing is currently scheduled for February 28, 2003.
- E. IUOE v. State of California (PERB matter) - PERB has scheduled a preliminary hearing February 26, 2003, to discuss the scope of the hearing before a PERB administrative law judge which is scheduled to begin March 18, 2003.
- F. California State University (CSU) v. State Personnel Board (Berger-Tully) - The trial court issued a peremptory writ of mandate, finding that the appeal constituted an appeal from rejection during probation rather than a dismissal for cause, and thus was not appealable to the Board.

- G. Engel v. Meith, et al. - Federal magistrate has issued a tentative ruling to declare Mr. Engel a vexatious litigant and require him to post a bond of \$10,000 to proceed with this action.
- H. Hymon-Perry v. State Personnel Board - The court issued a peremptory writ of mandate remanding the matter to the Board to reconsider the issue of penalty.

Other:

- A. SPB's Council of Counsels - Chief Counsel reports that she updated the participants on the new regulations, pending litigation and proposed legislation. Approximately 35 persons attended.
 - B. State Employee Mediation Program
 - Gatekeepers Meeting - Chief Counsel Elise Rose and Program Director Matilda Bannerman-Richter, hosted a meeting of gatekeepers yesterday to discuss issues of mutual concern. Meeting was well attended and the participants are very supportive of the program.
 - Refresher Mediation Training - Scheduled for March 24, 2003.
 - Volunteer Mediator Training - Scheduled for May 12-16, 2003, in Los Angeles.
 - C. Select Advisory Panel on Policy, Merit Employment and Technical Resources and Appeals - Upcoming meeting scheduled for February 25, 2003.
 - D. Professional Engineers in California Government/ California Association of Professional Scientists Legislative Reception - Attended by State Personnel Board Legislative Director Sherry Hicks and Chief Counsel Elise Rose.
4. REPORT ON LEGISLATION - Sherry Hicks

The Board was advised of the following:

- A. Meetings that the State Personnel Board has been having with Legislators on budget issues.
- B. Status of the State Personnel Board's proposed legislation.

- C. Sherry Hicks has been working with consultants for the budget subcommittees to make sure that the Board knows when all the hearings will be held.
- D. SCA 1 (Burton) - Has been significantly amended. State Personnel Board staff is reviewing the amendments.
- E. AB 79 (Dutra) - Suspends departments duties to make certain reports to the Legislature, given staffing and budget issues.

BOARD ACTIONS

5. STATE PERSONNEL BOARD SUMMARY MINUTES OF FEBRUARY 3, 2003

ACTION: Adopted on February 19, 2003.

VOTE: Elkins, Alvarado, Tom - Aye.

6. ADMINISTRATIVE LAW JUDGE CASES

On February 19, 2003, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Alvarado, Tom - Aye.

COURT REMAND CASE

SUSAN BERGER-TULLY, CASE NO. 01-0489

Appeal from rejection during probation

California State University, Long Beach

ACTION: In compliance with the Peremptory Writ of Mandate issued by the court, the Board adopted a resolution vacating the decision it issued on March 5, 2002, and dismissing the appeal for lack of jurisdiction

CAROLYN HYMON-PERRY, CASE NO. 00-0140

Appeal from dismissal

Sergeant

Norwalk

California Youth Authority

ACTION: In compliance with the Peremptory Writ of Mandate issued by the court, the Board adopted a resolution setting aside the decision it issued on March 6-7, 2001, and setting the matter for written and oral argument before the Board

PROPOSED DECISIONS

JOHN BARTOLONE, CASE NO. 00-3166
Appeal from rejection during
probation
Investigator, DMV (Range A)
Department of Motor Vehicles
ACTION: Rejection during probation revoked

LUCREZIA BUFFALOE, CASE NO. 02-3986
Appeal from dismissal
Correctional Officer
Chowchilla - Central California Women's Facility
Department of Corrections
ACTION: Dismissal revoked

CHERYL CROSSLEY, CASE NO. 02-2475
Appeal from ten-percent reduction
in salary for 12 months
Parole Agent I
Parole and Community Services Division
Department of Corrections
ACTION: Ten-percent reduction in salary for 12 months
modified to an official reprimand

TIMOTHY E. EXLEY, CASE NO. 02-1671
Appeal from rejection during
probationary period
Officer
Department of California Highway Patrol
ACTION: Rejection during probationary period sustained

RODNEY GAULDEN, CASE NO. 02-1119
Appeal from 30 workdays suspension
Correctional Officer
Corcoran - State Prison
Department of Corrections
ACTION: Thirty workdays suspension modified to 15 workdays
suspension

NINA GRIFFITH - CASE NO. 02-3664
Appeal from formal reprimand
Personnel Specialist
Chowchilla - Central California Womens' Facility
Department of Corrections
ACTION: Motion to dismiss granted

CALVIN LOCKARD, CASE NO. 02-2359
Appeal from five-percent reduction
in salary for six months
Correctional Sergeant
Susanville - State Prison
Department of Corrections
ACTION: Five-percent reduction in salary for six months
modified to a five-percent reduction in salary for three
months

SHIRLEY PENA, CASE NO. 02-3484
Appeal from dismissal
Psychiatric Technician
Porterville - Developmental Center
Department of Developmental Services
ACTION: Dismissal modified to a 10 work days suspension

EDWARD STREICHMAN, CASE NO. 02-3207
Appeal from a five-percent reduction
in salary for six months
Associate Tax Auditor
California Board of Equalization
ACTION: Five-percent reduction in salary for six months
revoked

GERALD TITTLE, CASE NO. 02-2971
Appeal from 60 working days suspension
Assistant Caltrans Administrator
Department of Transportation
ACTION: Sixty working days suspension modified to 30
calendar days suspension

PETITIONS FOR REHEARING

MARIO BORROEL, CASE NO's 00-0229E and
00-0276E
Request to file charges by James Roering
and David Huerta, complainants
Correctional Sergeant
Imperial - State Prison
Department of Corrections
ACTION: Petition for rehearing filed by respondent denied

DAVID BROWN, CASE NO. 01-3918
Appeal from dismissal
Officer
Department of California Highway Patrol
ACTION: Petition for rehearing filed by appellant denied

CHRISTOPHER R. CALVO, CASE NO. 02-0632
Appeal from dismissal
Officer
Department of California Highway Patrol
ACTION: Petition for rehearing filed by appellant denied

ANGELA JOHNSON, CASE NO. 02-2690
Appeal for lack of jurisdiction
Cook II
Department of the Youth Authority
ACTION: Petition for rehearing filed by appellant denied

HAROLD STONE, CASE NO. 02-1381
Appeal of withdrawal of action or appeal
Stationary Engineer
Pomona - Developmental Center
Department of Developmental Services
ACTION: Petition for rehearing filed by appellant granted
and remanded the matter for evidentiary hearing

PETITIONS FOR REHEARING, NOTICE OF FINDINGS

WESLEY CAPON, CASE NO. 01-1870
Appeal of whistleblower retaliation
Supervising Registered Nurse II
Solano - State Prison
Department of Corrections
ACTION: Petition for rehearing filed by respondent granted
and remanded the matter for evidentiary hearing

7. RESOLUTION RE NOTICE OF GOVERNMENT CODE SECTION 18671.1
EXTENSION.

ACTION: See pages 15-18.

8. WITHHOLD APPEALS

On February 19, 2003, the Board adopted the following
decisions presented by Laura Aguilera, Assistant Executive
Officer, California State Personnel Board.
VOTE: Elkins, Alvarado, Tom - Aye.

JAY ARNOLD, CASE NO. 02-1865
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

KEVIN BURKS, CASE NO. 02-1526
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

PATRICK D'SOUZA, CASE NO. 02-1731
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

WILLIAM GORK II, CASE NO. 02-1805
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

ODELL HILL, CASE NO. 02-0956
Classification: Parole Agent I, Adult Parole
Department of Corrections
ACTION: DISMISSED

JON HOEF, CASE NO. 02-1592
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

ANDREW MCSORLEY, CASE NO. 02-1623
Classification: Construction Supervisor I
Department of General Services
ACTION: DENIED

JON MORRISON, CASE NO. 02-1660
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

LESTER NOA, CASE NO. 02-1363
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JIMMY OWENS, CASE NO. 02-2043
Classification: Youth Correctional Counselor
California Youth Authority
ACTION: DENIED

RICHARD PINK, CASE NO. 02-1614
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

MICHAEL PULLEN, CASE NO. 02-1344
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

SHEILA STOKES, CASE NO. 02-2150
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

SAMUEL TOLLEY, CASE NO. 02-1428
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JOHN VERHOEVEN, CASE NO. 02-0394
Classification: State Park Ranger Cadet
Department of Parks and Recreation
ACTION: GRANTED

TAMMY WARE, CASE NO. 02-1426
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JOHNEL WHITE, CASE NO. 02-2145
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

RAY WILLIAMS, CASE NO. 02-3156
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

9. MEDICAL APPEALS

On February 19, 2003, the Board adopted the following decisions presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board.
VOTE: Elkins, Alvarado, Tom - Aye.

DENNY CLARK, CASE NO. 02-1497
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

PHILLIP FRANKS, CASE NO. 02-4071
Classification: Cadet, CHP
California Highway Patrol
ACTION: DISMISSED

RICHARD LANNOM, CASE NO. 01-3066
Classification: State Park Ranger Cadet
Department of Parks and Recreation
ACTION: DENIED

NARCISO PEDROZA, CASE NO. 02-1563
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

10. MERIT ISSUE COMPLAINTS

On February 19, 2003, the Board adopted the following
decision presented by Laura Aguilera, Assistant Executive
Officer, California State Personnel Board.
VOTE: Elkins, Alvarado, Tom - Aye.

(Merit Issue Complaint)

JOYCE BUTLER-SMITH, CASE NO. 01-1390
Classification: Food Service Worker II
Department of Developmental Services
ACTION: GRANTED

11. VOIDED APPOINTMENT APPEALS

On February 19, 2003, the Board adopted the following
decision presented by Laura Aguilera, Assistant Executive
Officer, California State Personnel Board.
VOTE: Elkins, Alvarado, Tom - Aye.

(Voided Appointment)

ANNA NAVARRETE, CASE NO. 02-1734
Classification: Office Technician (Typing)
Department of Corrections
ACTION: DENIED

12. PSYCHOLOGICAL SCREENING CASES

On February 19, 2003, the Board adopted the following decision presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board.

VOTE: Elkins, Alvarado, Tom - Aye.

S. NICHOLAS KING, CASE NO. 02-4322

Classification: Cadet, CHP

California Highway Patrol

ACTION: GRANTED

13. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER CONSIDERATION

(1) CHIEF, OFFICE OF WATER USE EFFICIENCY

The Department of Water Resources requests to allocate the above position to the CEA category. The Chief, Office of Water Use Efficiency is responsible for planning, organizing and directing the program and activities of the Office of Water Use Efficiency in accordance with applicable laws and regulations, the Governor's Water Policy and the Department's Strategic Plan.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW CEA POSITIONS

(1) CLINICAL ADMINISTRATOR, SECURE TREATMENT FACILITY, COALINGA

The Department of Mental Health's request to allocate the above position to the CEA category has been approved effective January 31, 2003.

(2) MANAGER SECURE TREATMENT PROGRAMS, REGIONAL RESOURCES DEVELOPMENTAL P&EB

The Department of Developmental Services request to allocate the above position to the CEA category has been approved effective January 31, 2003.

(3) DEPUTY DIRECTOR, HIGH SPEED RAIL AUTHORITY

The California Highway Patrol on behalf of the High Speed Rail Authority has withdrawn the request to allocate the above position to the CEA category.

ACTION: Noted

14. WRITTEN STAFF REPORT FOR BOARD INFORMATION

ANNUAL CENSUS OF EMPLOYEES IN STATE CIVIL SERVICE 2001-2002
FISCAL YEAR

ACTION: Written report presented.

15. INFORMATIONAL HEARING ON THE STATUS OF DEPARTMENTAL
COMPLIANCE WITH STATUTORY REPORTING REQUIREMENTS FIVE STATE
DEPARTMENTS ARE SCHEDULED TO PROVIDE STATUS REPORTS
Charles Cake, Acting Director, Department of Industrial
Relations
Steve Westly, State Controller, Office of the State
Controller
Fred R. Buenrostro, Jr., Chief Executive Officer, Public
Employees' Retirement System (Bilingual)
Eileen Potter, Chief Administrative Officer, Public
Employment Relations Board (Bilingual)
Jack Ehnes, Chief Executive Officer, State Teachers'
Retirement System

ACTION: Informational hearing not held. All departments
originally scheduled have complied with submittals due to the
State Personnel Board except the Public Employees' Retirement
System which will be scheduled for a future Board meeting.

A D J O U R N M E N T

SUBMITTED

1. MERIT RULE - Proposed adoption of the new Section 250 to the California Code of Regulations (CCR) entitled Requirement that Selection be Based on Merit and Fitness.
(Hearing held July 23, 2002).

NO ACTION

2. TEACHER STATE HOSPITAL (SEVERLY), ETC. Departments of Mental Health and Developmental Services.
(Hearing held December 3, 2002).

NO ACTION

3. VOCATIONAL INSTRUCTOR (SAFETY) (VARIOUS SPECIALTIES).
Departments of Mental Health and Developmental Services.
(Hearing held December 3, 2002).

NO ACTION

4. LEONARD GRILL, CASE NO. 02-1166. Appeal from ten percent reduction in salary for nine pay periods. Department of Forestry and Fire Protection. (Oral argument held December 3, 2002).

NO ACTION

5. RUFUS LINDSEY, CASE NO. 01-3651. Appeal from dismissal. Department of Corrections. (Oral argument held December 4, 2002).

NO ACTION

6. VICTORIA MCCOY, CASE NO. 01-3372. Appeal from dismissal. Department of Corrections. (Oral argument held December 4, 2002).

NO ACTION

7. LAYOFF RULES
Proposed amendments and adoption of regulations relating to layoff: Title 2, California Code of Regulations (2CCR), §§ 470, 470.1, 471, 471.1 and 472, Local Agency Personnel Standards §§ 17502 and 17520.
(Hearing held January 7, 2003).

NO ACTION

8. ANSWERS OR APPEALS FILED WITH STATE PERSONNEL BOARD
State Personnel Board (SPB) staff is proposing to adopt new Rule 63 to require, in part, that answers or appeals filed with SPB, requesting that a hearing or investigation be conducted by SPB, notify the responding party of all planned affirmative defenses and requests for relief.
(Hearing held February 3, 2003).

NO ACTION

9. TONY PORCELLA, CASE NO. 01-2898. Appeal from dismissal.
California Highway Patrol. (Oral argument held
February 3, 2003).

NO ACTION

10. WALTER JOHNSON, CASE NO. 02-0543. Appeal from dismissal.
Department of Developmental Services. (Oral argument held
February 3, 2003).

NO ACTION

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on February 19, 2003.

WALTER VAUGHN
Executive Officer
California State Personnel Board

VOTE: Elkins, Alvarado, Tom, - Aye.

CORRECTION

The Report on Legislation, SCA 1 (Burton) in the Summary Minutes of February 3, 2003, should have shown the Board's decision as OPPOSED.